

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 25 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEE E. PEYTON,

Plaintiff-Appellant,

v.

GEOFF DEAN, Sheriff; et al.,

Defendants-Appellees.

No. 18-55233

D.C. No.

2:17-cv-03202-VAP-AJW

Central District of California,
Los Angeles

ORDER

Before: GOULD, TALLMAN, and MURGUIA, Circuit Judges.

A review of the record and appellant's response to this court's February 28, 2018 order to show cause demonstrates that this court lacks jurisdiction over this appeal because the notice of appeal, dated February 4, 2018 and delivered to prison officials on February 8, 2018, was not filed or delivered to prison officials within 30 days after the district court's judgment entered on January 3, 2018. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional).

We cannot construe appellant's response to the order to show cause as a motion to reopen the time to appeal because appellant received the district court's judgment within 21 days after entry of the judgment. *See* Fed. R. App. P. 4(a)(6)(A). Moreover, we cannot construe appellant's response to the order to show cause as a motion for an extension of time to appeal because such a motion

would be untimely. *See* Fed. R. App. P. 4(a)(5)(C) (motion must be filed within 30 days after the time to appeal expires); *see also* *Malone v. Avenenti*, 850 F.2d 569, 572 (9th Cir. 1988) (Rule 4(a)(5) requires a formal motion for extension of time to appeal); *Pettibone v. Cupp*, 666 F.2d 333, 335 (9th Cir. 1981) (Fed. R. App. P. 4(a)(5) expressly requires filing of motion for extension of time and language of Rule precludes court from remanding on theory that untimely notice of appeal might be considered motion for extension of time). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.